

**LEGISLATIVE SERVICES AGENCY
OFFICE OF FISCAL AND MANAGEMENT ANALYSIS**

200 W. Washington, Suite 301
Indianapolis, IN 46204
(317) 233-0696
<http://www.in.gov/legislative>

FISCAL IMPACT STATEMENT

LS 7132

BILL NUMBER: HB 1602

NOTE PREPARED: Jan 26, 2015

BILL AMENDED:

SUBJECT: Methamphetamine.

FIRST AUTHOR: Rep. Smaltz

FIRST SPONSOR:

BILL STATUS: As Introduced

FUNDS AFFECTED: ☒ **GENERAL**
☒ **DEDICATED**
FEDERAL

IMPACT: State & Local

Summary of Legislation: This bill has the following provisions:

- A. *Penalty Enhancements* – It makes: (1) dealing in methamphetamine a Level 4 felony instead of a Level 5 felony; and (2) possession of methamphetamine a Level 5 felony instead of a Level 6 felony; if the person who committed the felony has a prior conviction for dealing in certain controlled substances, the person committed the felony while in possession of a firearm, the person committed the felony in, on, or within 1,000 feet of school property or a public park while a person under 18 years of age was reasonably expected to be present, the person who committed the felony delivered or financed the delivery of the drug to a person under 18 years of age and at least three years junior to the person, the person who committed the felony manufactured or financed the manufacture of the drug, or the person committed the offense in the physical presence of a child less than 18 years of age, knowing that the child was present and might be able to see or hear the offense. It makes possessing paraphernalia a Level 6 felony instead of a Class A misdemeanor if the person who committed the offense was in possession of methamphetamine or a chemical reagent or precursor while committing the offense. It provides that a person who: (1) has been convicted of possessing paraphernalia as a Level 6 felony because the person was in possession of methamphetamine or a chemical reagent or precursor while committing the offense; and (2) not later than seven years from the date the person was sentenced for the offense; knowingly or intentionally possesses ephedrine, pseudoephedrine, or phenylpropanolamine, pure or adulterated, commits possession of a precursor by a methamphetamine offender, a Level 6 felony.
- B. *Schedule IV Controlled Substances* – It makes materials, compounds, mixtures, and preparations that contain ephedrine or pseudoephedrine Schedule IV controlled substances subject to being

dispensed only by a prescription until July 1, 2018.

- C. *Restrictions on Drugs Containing Ephedrine or Pseudoephedrine* – It provides that a drug containing ephedrine or pseudoephedrine may be sold by a pharmacy or NPLeX retailer to an individual without a prescription during any 365-day period if the individual has obtained drugs that contain not more than 9.6 grams of ephedrine or pseudoephedrine, or both, during the 365-day period. Prohibits a person from purchasing drugs containing more than 9.6 grams of ephedrine or pseudoephedrine, or both, in a 365-day period without a prescription. It provides that, after June 30, 2016, a pharmacy or NPLeX retailer may not sell a drug that contains the active ingredient of ephedrine, pseudoephedrine, or both, under this section unless the individual package that contains the drug has a unique serial number or other identifying code printed on the individual package by the manufacturer of the individual package.
- D. It makes conforming amendments.

Effective Date: July 1, 2015.

Explanation of State Expenditures: *Penalty Enhancements* – This bill increases criminal penalties in the following circumstances.

	Current Level	Proposed Level	Circumstance
Dealing in Methamphetamine	Level 5	Level 4	Dealing less than one gram between 500 and 1,000 feet of a school or park when a person younger than 18 was reasonably expected to be present.
Possession of Methamphetamine	Level 6	Level 5	Possessing less than five grams between 500 and 1,000 feet of a school or park when a person younger than 18 was reasonably expected to be present.
Possessing Paraphernalia	Class A Misdemeanor	Level 6	Knowingly or intentionally possessing certain raw material, testing material or other devices while possessing meth or certain chemical reagents or precursors
Schedule IV drugs (7/1/2015 - 7/1/2018)		Levels 6 through Level 3	Adding products with ephedrine and pseudoephedrine to Schedule IV controlled substances as dealing offenses
Schedule IV drugs (7/1/2015 - 7/1/2018)		Level 6	Adding products with ephedrine and pseudoephedrine to Schedule IV controlled substances as possession offenses

The number of offenders that this would affect is uncertain. Under current law, the sentences for these offenses can all be suspended. Consequently, more offenders may be sentenced to probation.

Sentences by Felony Level								
	Level 3		Level 4		Level 5		Level 6	
	Sentence	Length of Stay ¹	Sentence	Length of Stay ¹	Sentence	Length of Stay ¹	Sentence	Length of Stay ²
Minimum	3 years	2.3 years	2 years	1.5 years	1 years	1.5 years	6 months	1.5 years
Advisory	9 years	6.8 years	6 years	4.5 years	3 years	4.5 years	1 year	4.5 years
Maximum	16 years	12 years	12 years	9 years	6 years	9 years	30 months	9 years
¹ Based on 25% good time credit ² Based on 50% good time credit								

The average expenditure to house an adult offender was \$19,497 in FY 2014. (This does not include the cost of new construction.) If offenders can be housed in existing facilities with no additional staff, the marginal cost for medical care, food, and clothing is approximately \$3,210 annually, or \$8.77 daily, per prisoner. The estimated average cost of housing a juvenile in a state juvenile facility was \$89,956 in FY 2014.

Schedule IV Controlled Substances-

Effect on Medicaid Expenditures - The bill could result in an increase of \$4,290 in Medicaid expenditures. If pseudoephedrine products were changed from over-the-counter (OTC) status to a prescription Schedule IV drug, a dispensing fee of up to \$3.90 is paid to the pharmacy provider. The Office of Medicaid Policy and Planning (OMPP) estimates 1,100 annual claims for pseudoephedrine products would result in additional annual Medicaid dispensing fees of \$4,290. The state matching share of the additional cost would be about \$1,440.

Medicaid is jointly funded by the state and federal governments. The effective state share of program expenditures is approximately 33.5%. Medicaid medical services are matched by the effective federal match rate (FMAP) in Indiana at approximately 66.5%. Administrative expenditures with certain exceptions are matched at the federal rate of 50%.

[Currently, Medicaid requires prescriptions for OTC medications for Medicaid members. Only those OTC medications included on the Medicaid formulary are considered to be covered drugs. The formulary includes pseudoephedrine products for Medicaid individuals 4 through 17 years of age. Medicaid does not pay a dispensing fee to pharmacies for OTC claims.]

Effect on Indiana State Police (ISP) – The ISP has reported that no additional costs would be expected to be incurred as a result of placing ephedrine and pseudoephedrine on the Schedule IV list. The ISP anticipates that requiring a prescription for these compounds would reduce the resources currently used to dismantle clandestine labs and the associated environmental cleanup. During CY 2013, the ISP reported 1,808 clandestine methamphetamine (meth) labs (as compared to 1,437 incidents in 2011 and 1,726 incidents in 2012). The ISP estimates that the average cost of cleanup per meth lab is about \$2,280, including supplies, equipment, labs analysis of evidence, and personnel expense. The average cost does not include costs to social service organizations, remediation, incarceration, or medical expenses incurred.

Effect on Indiana Professional Licensing Agency (IPLA) and Board of Pharmacy Expenditures – The IPLA and the Board of Pharmacy estimate that placing ephedrine and pseudoephedrine on the Schedule IV list would require no additional funds for implementation or surveillance.

Explanation of State Revenues: *Schedule IV Controlled Substances-*

State Sales Tax Revenue Loss— Annual gross sales tax revenues would likely decrease by an estimated \$1.5 M for FY 2016 and FY 2107 from changing the status of products containing ephedrine and pseudoephedrine from OTC to Schedule IV. Prescription drug purchases are exempt from sales tax, while OTC products are taxed. ISP reported that 1.8 million boxes of pseudoephedrine were reported sold in the state in CY 2014 according to the National Precursor Log Exchange (NPLEx) system.

Using an average cost of \$12 per box, total taxable sales in CY 2014 would have been about \$21.6 M. The actual effect would depend on the number of ephedrine and pseudoephedrine sales that would be transferred to prescription sales and the level of OTC product substitution that would occur as a result of the lack of availability of ephedrine and pseudoephedrine.

Sales tax revenue is deposited in the state General Fund (98.848%), the Motor Vehicle Highway Account (1%), the Commuter Rail Service Fund (0.123%), and the Industrial Rail Service Fund (0.029%).

Excise Tax Revenue- The bill could also result in a minimal change in excise tax revenue. Revenues may increase because illegal controlled substances are subject to a \$40-per-gram, or other unit, excise tax. However, the expected increase in excise tax revenue is minimal - the revenues in FY 2012 were about \$175 from all scheduled controlled substances excise taxes. Criminal offense penalties may include fines, and vehicles or other property involved in controlled substance offenses may be forfeited.

Increase in Criminal Fines – If additional court cases occur and fines are collected, revenue to both the Common School Fund and the state General Fund would increase. The maximum fine for all felony offenses is \$10,000. Criminal fines are deposited in the Common School Fund.

Explanation of Local Expenditures:

Explanation of Local Revenues: *New Felonies* – If additional court actions occur and a guilty verdict is entered, local governments would receive revenue from the following sources: The county general fund would receive 27% of the \$120 criminal costs fee that is assessed in a court of record.

Persons found guilty of a felony or misdemeanor are also required to pay the document storage fee (\$2), which is deposited into the clerk record perpetuation fund, and the jury fee (\$2) and the law enforcement continuing education fee (\$4), which are both deposited in the county user fee fund.

In addition, if a person is convicted of a drug-related offense, a sentencing court may assess a marijuana eradication fee of not more than \$300 if the county has established a Weed Control Board. The court may also assess an alcohol and drug services program fee of not more than \$300 if a local government has established an alcohol and drug services program. Revenue collected from the marijuana eradication fee is deposited into the county user fee fund. Revenue collected from the alcohol and drug services program fee is deposited in the county or city or town user fee fund.

State Agencies Affected: IPLA, Board of Pharmacy; FSSA, Office of Medicaid Policy and Planning; Indiana State Police; Department of Corrections.

Local Agencies Affected: Trial courts, local law enforcement agencies, prosecuting attorneys.

Information Sources: Department of Correction; Indiana State Police; Indiana Sheriffs' Association, 317-356-3633; www.in.gov/meth/.

Fiscal Analyst: Mark Goodpaster, 317-232-9852.